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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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ELEKTRA ENTERTAINMENT GROUP INC.;
CAPITOL RECORDS, INC.; UMG
RECORDINGS, INC.; and VIRGIN RECORDS
AMERICA, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CRB

C 07 4851

ELEKTRA ENTERTAINMENT GROUP INC.,
a Delaware corporation; CAPITOL RECORDS,
INC., a Delaware corporation; UMG
RECORDINGS, INC., a Delaware corporation;
and VIRGIN RECORDS AMERICA, INC., a
California corporation,

Plaintiffs,

v.

JOHN DOE #7,

Defendant.

CASE NO.

**COMPLAINT FOR COPYRIGHT
INFRINGEMENT**

JURISDICTION AND VENUE

1. This is a civil action seeking damages and injunctive relief for copyright infringement under the copyright laws of the United States (17 U.S.C. § 101 *et seq.*).

2. This Court has jurisdiction under 17 U.S.C. § 101 *et seq.*; 28 U.S.C. § 1331 (federal question); and 28 U.S.C. § 1338(a) (copyright).

3. Venue in this District is proper. See 28 U.S.C. §§ 1391(b), 1400(a). Although the true identity of Defendant John Doe #7 ("Defendant") is unknown to Plaintiffs at this time, on information and belief, Defendant may be found in this District and/or a substantial part of the acts of infringement complained of herein occurred in this District. On information and belief, personal jurisdiction in this District is proper because Defendant, without consent or permission of the copyright owner, disseminated over the Internet copyrighted works owned and/or controlled by Plaintiffs. On information and belief, such illegal dissemination occurred in every jurisdiction in the United States, including this one. In addition, Defendant contracted with an Internet Service Provider ("ISP") found in this District to provide Defendant with the access to the Internet which facilitated Defendant's infringing activities.

PARTIES

4. Plaintiff Elektra Entertainment Group Inc. is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of New York.

5. Plaintiff Capitol Records, Inc. is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of New York.

6. Plaintiff UMG Recordings, Inc. is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of California.

7. Plaintiff Virgin Records America, Inc. is a corporation duly organized and existing under the laws of the State of California, with its principal place of business in the State of New York.

8. The true name and capacity of Defendant are unknown to Plaintiffs at this time. Defendant is known to Plaintiffs only by the Internet Protocol ("IP") address assigned to Defendant

1 by his or her ISP on the date and time of Defendant's infringing activity. See Exhibit A. Plaintiffs
2 believe that information obtained in discovery will lead to the identification of Defendant's true
3 name.

4 **COUNT I**
5 **INFRINGEMENT OF COPYRIGHTS**

6 9. Plaintiffs incorporate herein by this reference each and every allegation contained in
7 each paragraph above.

8 10. Plaintiffs are, and at all relevant times have been, the copyright owners or licensees of
9 exclusive rights under United States copyright law with respect to certain copyrighted sound
10 recordings, including, but not limited to, all of the copyrighted sound recordings on Exhibit A to this
11 Complaint (collectively, these copyrighted sound recordings shall be identified as the "Copyrighted
12 Recordings"). Each of the Copyrighted Recordings is the subject of a valid Certificate of Copyright
13 Registration issued by the Register of Copyrights to each Plaintiff as specified on each page of
14 Exhibit A.

15 11. Among the exclusive rights granted to each Plaintiff under the Copyright Act are the
16 exclusive rights to reproduce the Copyrighted Recordings and to distribute the Copyrighted
17 Recordings to the public.

18 12. Plaintiffs are informed and believe that Defendant, without the permission or consent
19 of Plaintiffs, has continuously used, and continues to use, an online media distribution system to
20 download and/or distribute to the public certain of the Copyrighted Recordings. Exhibit A identifies
21 the IP address with the date and time of capture and a list of copyrighted recordings that Defendant
22 has, without the permission or consent of Plaintiffs, downloaded and/or distributed to the public.
23 Through his or her continuous and ongoing acts of downloading and/or distributing to the public the
24 Copyrighted Recordings, Defendant has violated Plaintiffs' exclusive rights of reproduction and
25 distribution. Defendant's actions constitute infringement of Plaintiffs' copyrights and/or exclusive
26 rights under copyright. (In addition to the sound recordings listed on Exhibit A, Plaintiffs are
27 informed and believe Defendant has, without the permission or consent of Plaintiffs, continuously
28 downloaded and/or distributed to the public additional sound recordings owned by or exclusively

1 licensed to Plaintiffs or Plaintiffs' affiliate record labels, and Plaintiffs believe that such acts of
2 infringement are ongoing. Exhibit A includes the currently-known total number of audio files being
3 distributed by Defendant.)

4 13. Plaintiffs have placed proper notices of copyright pursuant to 17 U.S.C. § 401 on
5 each respective album cover of each of the sound recordings identified in Exhibit A. These notices
6 of copyright appeared on published copies of each of the sound recordings identified in Exhibit A.
7 These published copies were widely available, and each of the published copies of the sound
8 recordings identified in Exhibit A was accessible by Defendant.

9 14. Plaintiffs are informed and believe that the foregoing acts of infringement have been
10 willful, intentional, and in disregard of and with indifference to the rights of Plaintiffs.

11 15. As a result of Defendant's infringement of Plaintiffs' copyrights and exclusive rights
12 under copyright, Plaintiffs are entitled to statutory damages pursuant to 17 U.S.C. § 504(c) against
13 Defendant for each infringement of each copyrighted recording. Plaintiffs further are entitled to
14 their attorneys' fees and costs pursuant to 17 U.S.C. § 505.

15 16. The conduct of Defendant is causing and, unless enjoined and restrained by this
16 Court, will continue to cause Plaintiffs great and irreparable injury that cannot fully be compensated
17 or measured in money. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. §§ 502
18 and 503, Plaintiffs are entitled to injunctive relief prohibiting Defendant from further infringing
19 Plaintiffs' copyrights, and ordering that Defendant destroy all copies of copyrighted sound
20 recordings made in violation of Plaintiffs' exclusive rights.

21 WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

22 1. For an injunction providing:

23 "Defendant shall be and hereby is enjoined from directly or indirectly
24 infringing Plaintiffs' rights under federal or state law in the
25 Copyrighted Recordings and any sound recording, whether now in
26 existence or later created, that is owned or controlled by Plaintiffs (or
27 any parent, subsidiary, or affiliate record label of Plaintiffs)
28 ("Plaintiffs' Recordings"), including without limitation by using the
Internet or any online media distribution system to reproduce (*i.e.*,
download) any of Plaintiffs' Recordings or to distribute (*i.e.*, upload)
any of Plaintiffs' Recordings, except pursuant to a lawful license or
with the express authority of Plaintiffs. Defendant also shall destroy
all copies of Plaintiffs' Recordings that Defendant has downloaded

1 onto any computer hard drive or server without Plaintiffs'
2 authorization and shall destroy all copies of those downloaded
3 recordings transferred onto any physical medium or device in
4 Defendant's possession, custody, or control."

5 2. For statutory damages for each infringement of each Copyrighted Recording
6 pursuant to 17 U.S.C. § 504.

7 3. For Plaintiffs' costs in this action.

8 4. For Plaintiffs' reasonable attorneys' fees incurred herein.

9 5. For such other and further relief as the Court may deem just and proper.

10 Dated: September 20, 2007

HOLME ROBERTS & OWEN LLP

11 By: 

12 MATTHEW FRANKLIN JAKSA

13 Attorney for Plaintiffs

14 ELEKTRA ENTERTAINMENT GROUP
15 INC.; CAPITOL RECORDS, INC.; UMG
16 RECORDINGS, INC.; and VIRGIN
17 RECORDS AMERICA, INC.

EXHIBIT A**JOHN DOE # 7****IP Address:** 130.212.161.133 2007-03-18 03:39:34 EDT**CASE ID#** 122246554**P2P Network:** Gnutella**Total Audio Files:** 309

| <u>Copyright Owner</u> | <u>Artist</u> | <u>Recording Title</u> | <u>Album Title</u> | <u>SR#</u> |
|----------------------------------|---------------|------------------------|------------------------|------------|
| Elektra Entertainment Group Inc. | Steel Pulse | Bodyguard | Earth Crisis | 53-776 |
| Capitol Records, Inc. | Beastie Boys | Sure Shot | Ill Communication | 213-461 |
| UMG Recordings, Inc. | Beastie Boys | Brass Monkey | Licensed To Ill | 79-470 |
| Virgin Records America, Inc. | Ben Harper | Fight for Your Mind | Fight For Your Mind | 210-135 |
| Virgin Records America, Inc. | Ben Harper | Burn One Down | Fight For Your Mind | 210-135 |
| Virgin Records America, Inc. | Ben Harper | Brown Eyed Blues | Diamonds on the Inside | 328-960 |
| Capitol Records, Inc. | Beastie Boys | Intergalactic | Hello Nasty | 277-731 |